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SEP 12 1994

FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	))))	CC Docket No. 94-54 RM-8012

TO: The Commission

COMMENTS OF COLUMBIA PCS, INC.

Columbia PCS, Inc. ("Columbia") applauds the Commission's foresight in confronting interconnection and equal access issues before broadband personal communications services ("PCS") licensing begins.[1/] These issues will be of crucial importance to the potential of PCS -- a nascent new service without a single subscriber -- to succeed in a commercial mobile radio service ("CMRS") marketplace dominated by mature and entrenched cellular carriers with some 20,000,000 subscribers.[2/] The resolution of these issues also will define the extent to which PCS can be expected to inject spirited competition into the wired local exchange monopoly.

[1/] Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rule Making and Notice of Inquiry, FCC 94-145 (Released July 1, 1994) (the "Notice").

[2/] In year ending June 1994, cellular subscribership expanded 48 percent; tens of thousands of cellular subscribers are being added daily. See CTIA Issues Six-Month Industry Report; Record Growth Indicated, Washington Telecom Week, Sept. 9, 1994, at 7. Even if cellular growth continues only at this rate and does not pick up additional momentum, the cellular industry may have as many as 36 million subscribers by the time PCS licensees begin service in late 1995/early 1996.

Addressing these issues expeditiously will facilitate the business and technical planning activities that many serious bidders are undertaking now. And resolving these issues in a way that appropriately preserves the flexibility of CMRS licensees and furthers competition between CMRS licensees will serve the interests of the American public in expanded consumer choice to low-cost, competitive wireless services.

I. EQUAL ACCESS

The Commission appropriately focuses on the significant implementation costs of imposing equal access obligations on all CMRS providers. Although the Commission states tentatively that the benefits of equal access outweigh these costs,[3] we believe that this tentative conclusion is insufficiently sensitive to the legitimate distinctions that should be drawn among different classes of CMRS carriers. Although Section 332 of the Communications Act requires "regulatory parity" generally, it clearly does not demand that the Commission slavishly clone its regulatory structure for all CMRS services, whether those services are mature industries or fledgling start-up sectors.

The Commission may determine that equal access obligations should be imposed upon cellular carriers. Such a determination would even the playing field between some cellular carriers that must offer equal access -- the regional Bell operating companies and, now, AT&T/McCaw -- and other

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[3] Notice at ¶¶ 42-43.

cellular carriers. But if the Commission makes such a determination, it should not extend that equal access obligation to PCS carriers.[4/] Should the marketplace so demand, and we believe it will, PCS carriers will have every incentive to offer access to all interexchange carriers rather than lose customers to cellular. But requiring equal access as a regulatory matter would impose unjustified costs on nascent PCS operations that already will be burdened with auction payments, staggering build-out costs, and microwave relocation (all burdens that are not borne by cellular incumbents).

The need to impose equal access arises as a consequence of market power and access to bottleneck facilities. PCS licensees, by definition, have no market power -- PCS does not yet have a single subscriber. Independent PCS licensees also will not have access to bottleneck facilities. Equal access obligations thus are not necessary to protect consumer choice. It would be folly for a PCS licensee to refuse to permit a customer to subscribe to the interexchange carrier of his or her choice because that customer will have a plethora of wireless alternatives to consider that would permit access to that carrier -- in each

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[4/] The exception to this rule should be that any PCS operations operated by a regional Bell company or other local exchange carrier in-region should be required to offer equal access. RBOCs and LECs, unlike independent PCS licensees, do have access to bottleneck facilities and have market power arising as a consequence of their wireline operations.

market, there will be two cellular incumbents (at least one of which already is subject to equal access obligations), two other PCS licensees, and perhaps an ESMR licensee. Market pressure created by a diverse and competitive environment will be more efficient than increased regulation that would inhibit that same competition.

Beyond doubt, the Commission should not impose equal access obligations on PCS, a fledgling industry that will be entering a six-competitor marketplace, merely because it may be appropriate to impose those obligations on the ten-year-old cellular industry with which PCS will compete. Section 332 of the Communications Act does not mandate that the Commission impose upon all different wireless services precisely the same set of one-size-fits-all regulations. The statute itself does not make such a broad statement:

> The Commission shall review competitive market conditions with respect to commercial mobile services . . . . the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services.

47 U.S.C. § 332(c)(1)(C), 107 Stat. 393 (1993). The legislative history makes it clear that the Commission can -- and, in appropriate cases, should -- treat different services distinctly:

> The purpose of this provision is to recognize that market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services. While this provision does not alter the treatment of all commercial mobile

> services as common carriers, this provision permits the Commission some degree of flexibility to determine which specific regulations should be applied to each carrier.
>
> For instance, the Commission may, under authority of this provision, forbear from regulating some providers of commercial mobile services if it finds that such regulation is not necessary to promote competition or to protect consumers from unreasonably discriminatory rates. At the same time, the Commission may determine that it should not specify some provisions as inapplicable to some commercial mobile services providers. . . .

H.R. Rep. 103-213, 103rd Cong., 1st Sess. 491 (1993).

Without question, the Commission retains the flexibility to consider the unique needs of each service in determining which regulations it should impose based on the "competitive market conditions" appropriate to each CMRS. Here, we believe the state of the cellular industry may merit the imposition of equal access obligations; the state of the PCS industry, however, does not. The Commission's actions should reflect the significant differences between the cellular and PCS industries, notwithstanding the fact that both cellular and PCS are "commercial mobile radio services."

II. INTERCONNECTION

Columbia concurs in the comments of the Personal Communications Industry Association on CMRS-LEC/LEC-CMRS interconnection issues, but wishes to emphasize independently that the Commission must specify that mutual compensation is a bedrock obligation that applies to all interconnection agreements. CMRS providers properly have been granted co-carrier status by the Commission. As a necessary predicate of this status, LECs and CMRS providers must be required to compensate each other for terminating traffic that originates on the other carriers' networks, irrespective of the jurisdictional nature of that traffic. (In any event, it will be increasingly difficult to ascertain the jurisdictional nature of traffic given the automatic roaming capabilities that now are being developed).

If the Commission does not make this requirement explicitly and forcefully, LECs are likely to continue to refuse mutual compensation -- as they have done since in the cellular arena since 1987 despite the Commission's explicit requirements in this regard.[5] If mutual compensation is refused, PCS carriers will lose the ability to inject meaningful competition into the local exchange monopoly. The leverage that the LECs would have in negotiating interconnection agreements without a Commission statement in favor of mutual compensation would be enormous. Given the number of minutes that a landline-substitute PCS household would produce, it is possible that such a business would be untenable if the Commission does not take a firm stance in favor of mutual compensation. Consumers would be denied both the price and service benefits of a competitive local exchange.

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[5] See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 F.C.C. Rcd. 2910 (1987).

In addition, the Commission must create a mechanism to enforce this policy. Using previous Commission precedent, Columbia recommends a two-pronged approach:

First, as in the case of the access tariffs at the time of divestiture, the Commission should request a "model" interconnection agreement from each Class A LEC. The Commission should review these model agreements to determine whether they conform to the Commission's mutual compensation policies. If they do so conform, we do not believe it necessary for the Commission to require the LECs to file the effective agreements on an ongoing basis. Rather, the Commission should be able to more effectively utilize the complaint process to remedy any material departures from the model agreements that would be on file with the Commission and be publicly available to all interconnecting carriers.

Second, the Commission should recognize that large CMRS providers will have more leverage in negotiating interconnection agreements than will smaller companies. This fact would result in discriminatory rates. The Commission therefore should prescribe an "equal per unit of traffic" requirement on all LECs for purposes of establishing interconnection agreements with CMRS providers.

Respectfully submitted,

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September 12, 1994